

REMARKS

Restriction Requirement

Applicants herein acknowledge the restriction requirement in the above-referenced application. Claims 1 through 31 are currently pending in the application. The Office has identified the following groups of claims as being drawn to separate inventions:

Group I – claims 1-20, drawn to a method of determining allergen activity in dust, classified in class 436, subclass 86; and

Group II – claims 21-31, drawn to a kit/protease detection apparatus, classified in class 422, subclass 50+.

Applicants hereby elect the claims of Group I, claims 1-20, with traverse.

Grounds for Traversal

Applicant respectfully traverses the restriction requirement herein as untimely. Claims 1-30 were first presented in substantially their present form on December 1, 2001. On June 3, 2004, a first Office Action on the merits was issued with respect to all of claims 1-30, wherein claims 1-28 were allowed. On October 4, 2004, Applicant responded, amending claim 29, and adding new claim 31. On December 28, 2004, a Final Office Action on the merits was issued, again allowing claims 1-28 and this time rejecting claims 29-31. Applicant filed a Request for Continued Examination on May 27, 2005, amending *only* claim 29.

Thus, the Examiner has twice considered claims 1-28 in their current form, and found them allowable, twice considered claims 29 and 30, and once considered claim 31 along with claims 1-30. No amendments have been made to at least claims 1-28 which would necessitate, or render desirable, a restriction requirement among them. Further, as the Examiner has already searched claims 1-31 prior to the present amendments to claim 29 submitted with the Request for Continued Examination, there was obviously no undue burden on the Examiner in terms of search scope.

Under M.P.E.P. 803, "If the search and examination of an entire application can be made without serious burden, the examiner *must* examine it on the merits, even though it includes claims to independent or distinct inventions." (emphasis added). Further, pursuant to 37 CFR 1.142(a), "[i]f the distinctness and independent of the invention be clear, such requirement will be made before any action upon the merits; however, it may be made at the discretion of the examiner." According to M.P.E.P. 811, "This means the examiner should make a proper requirement as early as possible in the prosecution, *in the first action if possible*, otherwise as soon as the need for a proper requirement develops." (emphasis added).

In the present situation two (2) Office Actions on the merits have been issued, and no amendments to any of the claims have been made which would, now, necessitate the issuance of a restriction requirement. It was clearly possible for the Examiner to issue a restriction requirement before the first Office Action on the merits, but the Examiner elected not to do so at that time.

As the proposed restriction requirement is believed to be inappropriate, and to continue prosecution with the claims in a single group will not impose any undue burden on the Examiner, it is respectfully requested the requirement be withdrawn and that claims 1-31 be examined together on the merits.

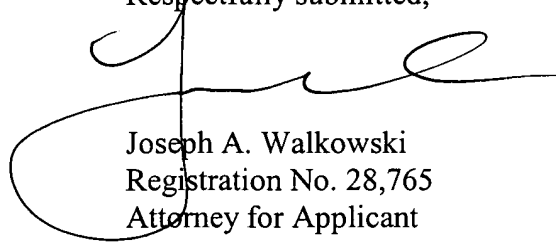
Supplemental Information Disclosure Statement

Please note that a Supplemental Information Disclosure Statement was filed herein on May 27, 2005, and that no copy of the PTO/SB/08A was returned with the outstanding Office Action. It is respectfully requested that an initialed copy of the PTO/SB/08A evidencing consideration of the cited references be returned to the undersigned attorney.

CONCLUSION

An early Office Action on the merits is respectfully solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. Walkowski', is written over the typed name and address.

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